IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 24754 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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AHMEDABAD DISTRICT CO-OP BANK LIMITED - Petitioner
Versus
DESAI KHOGARBHAI ARJANBHAI & 28 - Respondents

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Appearance :
MS ARCHANA U AMIN for Petitioners.
RULE SERVED BY DS for Respondent(s) : 1 - 29.
MS SHALINI S MAIR for Respondent(s) : 1 - 5,7 - 11,13 - 22,24 - 28.

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 05/10/2007
ORAL JUDGMENT

1. The petitioner – Ahmedabad District Co. Operative Bank Limited has filed this petition under Article 227 of the Constitution of India challenging the order passed by the learned Presiding Officer, Fast Track Court No. 3, Gandhinagar dated 20.09.2005 in Civil Misc. Appeal No. 34 of 2005 which was filed by the petitioner against the order passed below Exh. 19 in Regular Civil Suit No. 324 of 2004.

2. It is the case of the petitioner that the petitioner is a cooperative society duly registered under the provisions of the Gujarat Cooperative Societies Act. The petitioner Bank is an apex Bank for the district of Ahmedabad which is engaged in the business of banking which includes advancement of loans to its member societies. The respondents herein are the members of the cooperative society viz. Shreeji Prakashnagar Cooperative Housing Society Limited which is a member society of the petitioner Bank. The said society has applied for the loan to the Gujarat State Housing Corporation for construction of the houses, but as considerable time was taken by the Corporation in sanctioning the said loan, the said Society has applied to the petitioner Bank for accommodative loan and on the basis of the said application, the petitioner Bank has granted accommodative/interlocutory loan to the tune of Rs. 30.45 Lacs in the year 1982 on a condition that the

amount of loan to be received by the Society would be directly paid to the petitioner Bank for which the land as well as the houses were given under the charge as security of repayment of the said amount.

3. Since the Society could not repay the loan amount for a considerable time, the petitioner Bank has filed Lavad Suit No. 397 of 1988 before the learned Board of Nominees, Ahmedabad for recovery of a sum of Rs.63,31,512.13ps. along with interest thereon which came to be decreed in favour of the Bank by directing the said society to repay the amount of Rs.63,31,512.13 along with interest @ 15% vide order dated 08.05.1992.

4. It is also the case of the petitioner that after the award was passed by the Board of Nominees on 08.05.1992, as nothing was done by the members of the said society for repayment of the said amount, the petitioner issued notices for recovery of the said amount. The members of the society have challenged the award dated 08.05.1992 before the Gujarat State Cooperative Tribunal being Appeal Nos. 10 of 2000 and 12 of 2002. Both the appeals were dismissed by the Tribunal on the ground that the appeals were time barred as there was delay of 7 years and 10 months and no plausible explanation was given by the respondents for condonation of delay. The order of the Tribunal was not challenged either before this Court or any other forum and the same has become final.

5. It is also the case of the petitioner that since the amount

has not been paid and the proceedings under the Gujarat Cooperative Societies Act have become final, the petitioner Bank has issued notice for attachment under Section 13 (2) of the Securitisation Act for securing repayment of the amount of loan granted by the Bank. No reply was given by the respondents to the said notice and hence, the petitioner Bank has issued further notice under Section 13 (4) of the Act after the expiration of the statutory time limit of 60 days for initiating action of attachment under the provisions of the Act. On receipt of this notice, the respondents have filed Regular Civil Suit No. 324 of 2004 before the learned Civil Judge (J.D.), Gandhinagar for permanent injunction and declaration along with an application Exh. 5 for temporary injunction. The petitioner Bank has also moved an application Exh. 19 under the provisions of Order 7, Rule 11 D of the Civil Procedure Code praying for rejection of the plaint on the ground that the suit filed by the respondents is barred by law as the dispute between the petitioner Bank and the respondents i.e. the members of the cooperative society is relating to the business of the petitioner Bank. Therefore, an appropriate remedy would be by way of a reference under Section 96 of the Gujarat State Cooperative Societies Act and not by way of a Civil Suit. The petitioner Bank has also raised the issue before the learned Civil Judge that Civil Court has no jurisdiction to decide the dispute between the petitioner society and its members society. The learned Civil Judge vide his common order passed below application Exh. 5 & 19 on 01.05.2005, rejected both the applications.

6. Being aggrieved by the said order, the petitioner Bank has filed Civil Misc. Appeal No. 34 of 2005. The said appeal came to be dismissed by the learned Fast Track Court Judge, Gandhinagar vide his order dated 20.09.2005.

7. It is this order of the learned Fast Track Court Judge, Gandhinagar which is under challenge in the present petition.

8. This Court has passed a detailed order on 28.12.2005. The Court has recorded the submissions made on behalf of the petitioner and while admitting the present petition, the Court has referred to two contentions by the petitioner. The first contention is that in view of the provisions of the Gujarat State Cooperative Societies Act, Civil Court has no jurisdiction and secondly, once the notice under Securitisation act was issued, as per the judgment of the Hon'ble Supreme Court in the case of Maradia, Civil Court has no jurisdiction. Interim relief in terms of para 7 (bb) was also granted whereby proceedings of Regular Civil Suit No. 324 of 2004 pending before the learned Civil Judge (S.D.), Gandhinagar were stayed.

9. Heard Ms. Archana Amin, learned advocate appearing for the petitioner.

10. The present petition is admittedly filed under Article 227 of the Constitution of India. Normally, the Court would

not interfere in a petition filed under Article 227, especially when there is concurrent finding of both the Courts below. But here in the present case, the issue raised is with respect to the jurisdiction of the Civil Court. While admitting the petition, the Court has specifically referred to the contention that in view of the provisions contained in Section 96 of the Gujarat Cooperative Societies Act, Civil Court has no jurisdiction. The Court has also taken into consideration the other contention that once the notice is issued under Section 13 (2) and for want of compliance, possession was sought to be taken under Section 13 (4) of the Securitisation Act, the challenge to the said action can not be made before the Civil Court. The said challenge can be made only before the Debts Recovery Tribunal. This Court has also taken the same view in the case of *Oriental Bank of Commerce V/s. Naresh Khusaldas Gangtani, decided on 15.06.2007 in Special Civil Application No.1362 of 2005*.

11. It is true that the petitioner has not raised this issue before the Trial Court while moving an application Exh. 19. Of course, the question regarding jurisdiction was raised but it is altogether on a different ground. The petitioner can certainly derives support for its plea by raising any one or more legal issues. Since there is no finding of both the Courts below on this new issue, the Court will not go into that issue at this juncture. The Court, therefore, thinks it fit and proper to remit the matter back to the Trial Court so as to enable the petitioner to raise this issue with regard to jurisdiction

on the ground that the challenge to the notice issued under Section 13 (2) and 13 (4) cannot be raised before the Civil Court and the Civil Court has no jurisdiction to decide the same. Keeping this in mind and without pronouncing any judgment on this issue at this stage, the impugned orders are hereby quashed and set aside with a direction to the Trial Court either to decide the issue regarding jurisdiction by way of a preliminary issue in light of the observations made hereinabove or to dispose of the suit finally keeping in mind true legal position, as expeditiously as possible and preferably within a period of six months from the date of receipt of writ or from the date of receipt of certified copy of this order, whichever is earlier.

12. Subject to the aforesaid observation and direction, this petition is accordingly disposed of. Rule is made absolute to the aforesaid extent without any order as to costs.

[K. A. PUJ, J.]

Savariya